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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0115**

Gregg Andersen,
Appellant,

vs.

Owners Insurance Company,
Respondent.

**Filed April 2, 2018
Reversed and remanded
Reyes, Judge**

Blue Earth County District Court
File No. 07-CV-15-2595

Alexander M. Jadin, Roeder, Smith, Jadin, P.L.L.C., Bloomington, Minnesota (for appellant)

Timothy P. Tobin, Brock P. Alton, Gislason & Hunter, L.L.P., Minneapolis, Minnesota (for respondents)

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant Gregg Andersen appeals the district court's order denying his request for preaward interest on his commercial-insurance-appraisal award, arguing that the supreme court's decision in *Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135 (Minn. 2017) dictates

that he is entitled to preaward interest pursuant to Minn. Stat. § 549.09 (2016). We reverse and remand for a determination of preaward interest pursuant to section 549.09, subd. 1(b), the supreme court's holding in *Poehler*, and this court's holding in *K & R Landholdings, LLC v. Auto-Owners Ins.*, No. ___ N.W.2d ___, 2018 WL 817723 (Minn. App. Feb. 2, 2018).

FACTS

The facts are undisputed. Andersen owns a commercial building located in Mankato, Minnesota. On March 7, 2014, a fire severely damaged his property. Andersen subsequently submitted a claim to respondent Owners Insurance Company (Owners) under his commercial insurance policy with Owners. The parties each obtained independent valuations of the property damage but could not agree on a monetary amount. Andersen demanded an appraisal hearing, which took place on May 29, 2015. An appraisal panel awarded Andersen \$451,844 in actual cash value and \$548,666 in replacement-cost value, which was more than Owners had paid on the policy. After receiving the panel's decision, Owners paid the remaining amount owed to Andersen.

Andersen filed a motion in the district court seeking confirmation of the appraisal award, entry of judgment in the amount of \$548,666, plus an award of pre- and post-award interest pursuant to Minn. Stat. § 549.09, costs, and disbursements. Owners filed a motion seeking confirmation of the appraisal award, entry of Judgment in the amount of \$425,334, a determination that it has been paid in full, and that it did not owe Andersen interest, costs, or disbursements. On November 25, 2015, the district court filed its order confirming the appraisal award; entering judgment in the amount of \$425,334; determining that the

judgment was satisfied; and denying Andersen’s motion for prejudgment interest on the appraisal award, costs, and disbursements.

Andersen appealed the district court’s order, and this court stayed the appeal pending the resolution of *Poehler*. On July 19, 2017, the supreme court released *Poehler*, and this court then dissolved the stay of Andersen’s appeal.

D E C I S I O N

I. *Poehler* and *K & R* control our decision.

Andersen contends that *Poehler* directly controls the preaward-interest issue in this case. We agree in light of our decision in *K & R*.

In *Poehler*, the supreme court interpreted Minn. Stat. § 549.09 and concluded that it “plainly and unambiguously provides preaward interest on pecuniary damages—including those awarded in insurance appraisals—that are not otherwise excluded by the statute.” 899 N.W.2d at 140 (emphasis added) (quotation and footnote omitted). The supreme court held that “absent contractual language explicitly precluding preaward interest, an insured may recover preaward interest on an appraisal award for a fire insurance loss, notwithstanding a contractual loss payment provision stating that the loss is payable after the filing of an appraisal award.” *Id.* at 142. While *Poehler* involved a homeowner’s insurance policy, this court in *K & R* applied the holding in *Poehler* to the commercial-policy insureds in *K & R*, concluding that they are also entitled to preaward interest pursuant to Minn. Stat. § 549.09. 2018 WL 817723, at *6.

Owners argues that (1) this court’s decision in *Hogenson v. Hogenson*, 852 N.W.2d 266 (Minn. App. 2014), dictates that Minn. Stat. § 334.01 (2016) applies to commercial

insurance-policy claims; (2) if not section 334.01, Minn. Stat. § 60A.0811 (2016) instead applies to commercial-insurance-policy claims; and (3) Minn. Stat. § 549.09 does not apply because appraisal proceedings are not arbitrations. We address each in turn.

II. Minn. Stat. § 334.01 does not control preaward interest for commercial insurance policies.

Owners first contends that section 334.01 applies to this commercial insurance policy because it fits within section 549.09's clause, which renders the statute applicable "except as otherwise provided by contract or allowed by law." Minn. Stat. § 549.09, subd. 1(b). Owners relies on *Hogenson v. Hogenson*, 852 N.W.2d 266 (Minn. App. 2014), which held that preverdict interest is permitted for a conversion claim under common law and that section 334.01 applies if the damages are ascertainable or liquidated. 852 N.W.2d at 274. This court concluded that section 549.09 "was meant to supplement, not replace, the existing law on preverdict interest," and that "the phrase 'except as otherwise allowed by law' required that preverdict interest be calculated under existing common-law principles whenever possible." *Id.* at 273-74.

Owners argues that *Hogenson* applies here and that the crux of the present case is the amount that Owners owes Andersen pursuant to his insurance contract, which is a claim for damages at common law. However, this court disposed of that argument in *K & R*, stating that the commercial-insurance-policy claim involved preaward interest on an appraisal award and, as here, respondent failed to cite authority demonstrating that preaward interest was permitted for appraisal awards at common law. 2018 WL 817723, at *4. This court also noted that "[t]he supreme court could have acknowledged that section 334.01 may, in

some circumstances, ‘otherwise’ provide for preaward interest. But the supreme court did not mention section 334.01.” *Id.* *K & R* concluded that the supreme court in *Poehler* did not intend to limit the application of its holding to homeowners insurance policies alone, as evidenced in its analysis of a federal district court case involving a commercial-property insurance policy. *Id.* (citing *Poehler*, 899 N.W.2d at 142 (citing *Hous. & Redevelopment Auth. of Redwood Falls v. Hous. Auth. Prop. Ins.*, No. 14-CV-4741, 2015 WL 4255858 (D. Minn. July 14, 2015))). Therefore, section 334.01 does not apply to this commercial insurance policy. *K & R*, 2018 WL 817723, at *4.

III. Minn. Stat. § 60A.0811 does not control preaward interest for this commercial insurance policy.

Owners argues that preaward interest is “otherwise” provided by law pursuant to Minn. Stat. 60A.0811, which applies to commercial insurance policies. This court also disposed of this issue in *K & R*, holding that section 60A.0811 is limited to “a court action or arbitration proceeding, including an action seeking declaratory judgment.” 2018 WL 817723, at *5 (quoting Minn. Stat. § 60A.0811, subd. 3). Here, an appraisal proceeding, as held in *K & R*, is neither an arbitration proceeding nor does it arise from one. *See* 2018 WL 817723, at *5. Similarly, an appraisal proceeding does not determine liability and is not a court action. *Id.* (citing *Johnson v. Mut. Serv. Cas. Ins. Co.*, 732 N.W.2d 340, 346 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007) (“It is well settled that appraisal does not determine liability under a policy. Liability depends on a judicial determination.”)); *Vaubel Farms, Inc. v. Shelby Farmers Mut.*, 679 N.W.2d 407, 411-12 (Minn. App. 2004) (noting that an “action” is “confined to judicial proceedings”). Thus,

section 549.09 applies here because section 60A.0811 does not “otherwise” provide for preaward interest. *K & R*, 2018 WL 817723, at *5.

IV. *K & R* is dispositive of Owners’ argument that appraisals are arbitrations and are not an event triggering the application of section 549.09.

Owners argues that section 549.09 does not apply because appraisals are not “arbitrations” under the Arbitration Act and relies on the *Poehler* dissent to further argue that the appraisal cannot trigger a right to preaward interest under the statute. We are not persuaded.

Both *Poehler* and *K & R* concluded that section 549.09 “unambiguously provides for preaward interest” on an appraisal award. *Poehler*, 899 N.W.2d at 140; *K & R*, 2018 WL 817723, at *5. Therefore, Owners’ argument that section 549.09 does not apply because appraisals are not “arbitrations” lacks merit.

As to Owners’ triggering-event argument, in *Poehler*, the district court found that *Poehler*’s demand for an appraisal was the event triggering application of preaward interest under section 549.09. 899 N.W.2d at 140, n.2. Because the respondent insurance company did not argue that *Poehler*’s demand for an appraisal was not a triggering event, the supreme court concluded that the triggering-event issue was not properly before the court. *Id.* Just as the *K & R* court concluded that the respondent insurance company’s reliance on the *Poehler*’s dissent was unpersuasive and conflicted with the majority’s holding, we conclude the same with respect to Owners’ argument.

Reversed and remanded.